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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/717,015

11/19/2003

Randall J. Huebner

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KOLISCH HARTWELL, P.C.
200 PACIFIC BUILDING
520 SW YAMHILL STREET
PORTLAND, OR 97204

EXAMINER

RAMANA, ANURADHA

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/717,015	Applicant(s) HUEBNER, RANDALL J.	
	Examiner Anu Ramana	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-74 is/are pending in the application.
- 4a) Of the above claim(s) 56,66 and 73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-55,57-65,67-72 and 74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 63 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 63, the recitation "an orthogonal plane that includes the long axis of the longitudinal slot and that is oriented orthogonally to the longitudinal slot" renders the claim vague and indefinite since it is unclear how the orthogonal plane can include the long axis of the longitudinal slot and be oriented orthogonally to the longitudinal slot since one would typically define a longitudinal slot with respect to its long axis. The Examiner suggests definition of the orientation of the plane with respect to the long axis of the longitudinal slot to avoid confusion.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 52-55, 57, 58, 62-65, 67-68, 71-72 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Putnam et al. (US 5,586,985).

Putnam et al. disclose a method of fixation of distal radius fractures with a bone plate 10 having a long axis and including: a longitudinal slot 22; a plurality of openings

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in the head portion; and a transverse slot 24, lying crosswise to a lateral axis of the head portion 14 of the plate and transverse to the long axis of the bone plate, to allow for more angulation as desired by a practitioner. Putnam et al. clearly disclose placement of a fastener in slot 24 followed by placement of a fastener in opening 22 wherein angulation of the plate can be adjusted by movement of the plate about a fastener placed in slot 24 (Fig. 1, col. 3, lines 63-67, cols. 4-7 and col. 8, lines 1-41).

Regarding claim 53, Putnam et al. disclose the head portion of the bone plate can be bent to conform to the underlying bone. Thus, slot 24 extends along an arcuate path.

The claimed method steps are inherently performed when the Putnam et al. device is used to fix distal radius fractures.

Claims 52-55, 57, 58, 62-65, 67-68, 71-72 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Orbay et al. (US 6,440,135).

Orbay et al. disclose a bone plate 210 having a wider head portion and a narrower body portion including: a longitudinal slot 228; and openings (224, 226, 229, 230, 232, 234 and 236) wherein an opening or transverse slot 236 has an extent transverse to the long axis of the bone plate (Fig. 12, col. 3, lines 46-67, col. 4, col. 5, lines 1-36, col. 7, lines 43-67 and col. 8, lines 1-3).

Orbay et al. disclose placement of screws through holes in the bone plate, adjustment of the fractured bones under the plate and tightening of the screws after adjustment of the fractured bones (col. 7, lines 43-65).

Regarding claim 53, Orbay et al. disclose the head portion of the bone plate can be bent to conform to the underlying bone. Thus, slot 236 extends along an arcuate path.

The claimed method steps are inherently performed during use of Orbay et al. device for fixation of fractures of the distal radius.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59-61 and 69-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orbay et al. (US 6,440,135) in view of Michelson (US 6,383,186).

Orbay et al. disclose all elements of the claimed invention except for a plate holder that is used to move the plate.

Michelson teaches a plate holder that engages a bone plate to enable movement of the plate (Figs. 38 and 39A-D, col. 18, lines 49-67 and col. 19, lines 1-19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a plate holder as taught by Michelson to enable movement and adjustment of the plate in the method of the combination of Orbay et al. and Michelson.

The method steps of claims are rendered obvious by the above discussion.

Claims 59-61 and 69-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Putnam et al. (US 5,586,985) in view of Michelson (US 6,383,186).

Putnam et al. disclose all elements of the claimed invention except for a plate holder that is used to move the plate.

Michelson teaches a plate holder that engages a bone plate to enable movement of the plate (Figs. 38 and 39A-D, col. 18, lines 49-67 and col. 19, lines 1-19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a plate holder as taught by Michelson to enable movement and adjustment of the plate in the method of the combination of Putnam et al. and Michelson.

The claimed method steps are rendered obvious by the above discussion.

Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on July 31, 2008 have been fully considered.

Applicant's arguments with respect to the rejections under 35 USC 102(b) over Putnam et al. and Orbay et al., respectively are not persuasive for the following reason.

The limitation "transverse slot" only requires a slot or opening that has some extent transverse to the long axis of the bone plate. Putnam et al. clearly disclose a transverse slot 24 that has some extent transverse to the long axis of the bone plate. Similarly, Orbay et al. also disclose a transverse slot 236 that has an extent transverse to the long axis of the bone plate.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
November 6, 2008

/Anu Ramana/
Primary Examiner, Art Unit 3775